OPEN SHOP vs. CLOSED SHOP

Debated by the Chosen Champions of Labor and Capital Under Fair Auspices at Chicago.

At the Chicago convention of the National Civic federation one of the subjects of debate was the "open shop" versus the "closed shop." The debate between representatives of labor and capital was presided over on one day by Oscar Straus, ex-minister to Turkey and president of the New York board of trade.

President Gompers of the American Federation of Labor occupied the chair on another day, and Senator Hanna was also chairman for a day.

In parallel columns The Herald presents extracts from two chief arguments in the main issue, clipping them from the verbatim reports contained in the Bricklayer and Mason, a periodical that is the organ of the Bricklayers and Masons' International association.

THE "OPEN SHOP"

(By T. F. Woodlock, Editor Wall Street Journal.)

MR. CHAIRMAN, Ladies and Gentlemen—The society in which we live is constituted as a pure democracy, the character of which we may suppose to be the Declaration of Independence and the common law, and the by-laws of which we may take to be the constitution of the United States and the several states. The rest is detail. The purpose for which our society is organized is the securing to every man full enjoyment of his natural rights under the common law, these rights being specifically stated in the Declaration of Independence. It is to this end that the laws are made by the congress and by several states—these laws being in the main intended to express and give effect to the principles contained in our charter and our by-laws. I take it that it is not necessary now to go into the question whence came the charter and the by-laws, for I must assume that we are all agreed upon them as a great fact—indeed, the central fact of our entire social organization. If we are not so agreed, then argument upon the point becomes a mere waste of time in view of the infinitely more serious problems that confront us. Taking for granted the acceptance of the charter and by-laws, it seems to me that the following propositions necessarily hold good:

1. That men are born free with a natural right to life, liberty and the pursuit of happiness—this involving, of course the right to hold property and to dispose of it.
2. That men are born unequal as to their abilities.
3. That the law cannot justly attempt restriction or abridgment of individual natural rights, save for the protection of similar rights to the general community; and,
4. That the law cannot justly attempt to abolish the natural inequalities existing in the case of physical or intellectual abilities of the individual citizen.

To deny the first propostion is to deny the foundation of our democracy. To deny the second is to deny what fairly may be said to be an obvicus fact. To deny the third is to deny liberty; and to deny the fourth is to proclaim socialism in its most extreme form; that is, community of property. I assume the truth of these proporitions.

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We have, therefore, a society composed of individuals with equal natural rights and unequal abilities. The law is for the purpose of protecting every individual in the enjoyment of his rights, including such property as his abilities enable him justly to acquire. It is understood, of course, that man's natural and inalienable rights are at all times conditioned by the natural and inalienable rights of his neighbors. The law takes a man's life to preserve that of others, takes his liberty for the safety of others, and by taxation takes his property for the common good. No individual may fairly claim that his natural rights are always absolute as against the natural rights of his neighbors. There must at times be conflict, and in such conflict it is a safe principle that the rights of the many are superior to the rights of equal rank inherent in the few. What the law is aiming at, in fact, its fundamental purpose, is a preservation of equal rights to every man as far as possible.

An important principle follows from this, taken in connection with the inequality of abilities, which is that as the law cannot remedy inequality in indivdual abilities, it cannot undertake to put a limit to ability or compensation for ability; nor can it undertake to guarantee a minimum compensation to anyone. Consequently, it can do no more than endeavor in the preservation of equal rights to all, to secure to each and every man what may be termed free access to his legitimate opportunity for the exercise of his abilities in furtherance of his natural rights. This principle I may term that of equality in opportunity, and I hold that it necessarily follows from the principle of equal rights. It is in the enforcement of this principle that all anti-trust laws; in fact, the whole anti-trust principle, has its foundation.

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The law finds a man possessed of certain abilities by exercise of which he can properly acquire or hold property. It does not and should not attempt to prevent another man of superior ability from taking away the first man's market, whether for commodities or labor, by virtue of superior ability in fair competition—as by underselling or overbidding him—for to do so would be to attempt to regulate natural inequalities. But the law does aim to prevent other men from conspiring to take away the opportunity of the first man by coercion or fraud. Fair competition is not and should not be interfered with in a free community. Competition, however, ceases to be fair when encroachment is made or attempted upon a man's natural rights or when interference is attempted with what may be called natural conditions. It is the business of the law to prevent monopoly of opportunity, which is the exact antithesis of equality, and whenever anti-trust laws are devised their fundamental purpose is to prevent this kind of monopoly. The words restraint of trade very well express the fundamental idea, inasmuch as they imply interference with natural conditions. When anti-trust laws attempt to do much more than this they are apt to be either unjust or inefficient. I need hardly stop to point out that anti-trust laws are by no means confined to corporations. The anti-trust principle existed before corporations were ever dreamed of, and the language of the Sherman law in 1890 makes it clear that restraint of trade is the same whether committed by individuals or companies. The principle is universal; restraint of trade by any one is illegal and immoral, and restraint of trade means practically monopoly of opportunity. Without this monopoly it is difficult to see how there can be true restraint of trade.

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A number of cases have been adjudicated under the Sherman anti-trust law, and I think I am right in saying that the decisions have usually turned on the proof of a monopoly or attempted monopoly of something which, in the long run, would fall under the definition that I have suggested for equality in opportunity. That more cases have not been passed upon is perhaps to be explained by the difficulty of obtaining sufficient evidence. In the nature of things, conspiracy is especially difficult of proof, but that in no way bears upon the principle.

The question of the open shop involves the rights of three parties, namely: The union man, the non-union man and the employer. Consider the case of the non-union man. The rights of every man to dispose of his labors as fundamental as his right to dispose of his property, for a man must labor to support life, and to preserve life he may even in self-defense commit what is known as justifiable homicide. The right of an employer to contract with another man for the purchase of his labor is equally fundamental, and is morally limited only by considerations with respect to what is known as the "living wage" question, which question is distinct from that which I am now considering. If one man is willing to do lawful work for hire and another man is willing to hire him to do that work, no one may justly interfere to prevent the work from being done. To do so would be to restrain or abridge the liberty of either individual or of both. The rules, designs or purposes of a union, whether of capital or labor, cannot be held superior to the natural rights of the individual. It is not and never can be, the business of a free state to restrict the natural rights of a citizen except for his own protection of natural rights of the community as a whole.

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Now, the question of the "open shop" resolves itself into the question whether associated labor has the right to aim at a monopoly of employment for its members. The union says in effect: "You must employ our members only, or we will not work for you at all." In saying this it notifies the employer that he must choose between all union labor and all non-union labor, and it notifies the non-union man that he may not work alongside the union man. It explicitly denies the right of the employer to hire whomsoever he pleases, and it explicitly denies the right of the non-union man to work for whomsoever he pleases. It restricts the right of the employer by saying that he shall hire only union men, and it restricts the right of men to work by making it dependent upon membership in a union. Leaving out of consideration altogether the matter of violence, which, while it is, unfortunately, at times a very practical question, is not necessarily part of the principle of the "closed shop," it seems to me clear that the principle of the "closed shop" is as complete and perfect an example of restraint of trade in labor as any one could wish.

No more direct denial of the principle of equality in opportunity could possibly be imagined than denial of the "open shop" principle.

THE "UNION SHOP."

(By E. A. Moffat, Editor Bricklayer and Mason.)

MR. CHAIRMAN, Ladies and Gentlemen—No one has enjoyed individual liberty since man was in a state of nature. Individual liberty for men outside a state of nature would mean anarchy. With the growth of civilization it has become more and more restricted. The Declaration of Independence, upon which our critics try to base their argument of individual liberty, did not extend, as Crozier points out in his "History of Intellectual Development," to the red men of the great west, notwithstanding that it proclaimed that all men are born free and with equal rights to life, liberty and the pursuit of happiness. This reference is made simply to show that those who best understood individual liberty were not unmindful of its limitations.

And to claim that the "open shop" would mean individual liberty, even in the accepted sense, is to beg the question. Individual liberty in the case of the workman who is not a member of a trade union is but a mere abstraction. This unprotected workman is free only to starve, or, at least, to accept the terms offered him and, to that extent, help depress the common plane of living. It is easy to say that if the wages are not suitable to him he should go elsewhere. But wherever he may go, his condition does not change, for he has only his labor to sell; indeed, his condition becomes worse, as with each contract with an employer his powers of resistance are lessened.

Much is heard of what is called "mutually satisfactory wages." Trade unionists deny that there can be any such thing between the non-union workman and the employer. The latter has the vantage ground. He has possession, which is nine points. An employer and a job make an organization. Notwithstanding this, how often we find employers combined to regulate wages and hours. Sometimes the combination is unconcealed; other times it is not. But the practice is much more prevalent than employers are ready to admit. It won't do to say the employers have been driven to this because of the demands of trade unions, for concerted action upon the part of employers obtained even more widely when trade unions were impossible under the law.

What becomes of the liberty of the weaker party in this case of "mutually satisfactory wages?" Is this freedom of contract? Can there be any equity in such a contract, and is it not made under duress? The claim is made that the superior workman finds protection in his superior ability. But even this workman unless he be a genius, has only his labor to sell, and, if not combined with his fellows for mutual protection, is quite as much at the mercy of the employer as the workman whose ability is commonplace.

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Is the individual liberty of which we hear so much intended for the good of the workman? To say that it is is to claim that he was better off when he was without organization, for the corollary is that the trade union has deprived him of his liberty, that he may no longer accept whatever terms are offered to him. Is it intended for the good of the community? Show me a country today where this idea obtains and I will show you a country that is handicapped and poor indeed, with wealth and luxury at the top and misery and unrest below.

So much for the argument of individual liberty.

The union shop is not a monopoly—not, at least, in the sense that the New York stock exchange or the Standard Oil company or the coal trust are monopolies. This cry of monopoly against the trade unions is the cry of "Wolf!" Our markets are honeycombed with monopolies. Yet the efforts of the working people to protect themselves are looked upon in some quarters as the most dangerous form of organization. The union shop, I repeat, is not a monopoly. Castle Garden proves it. Our tariff protects the American manufacturer. Then why may not the American workingman protect himself against those, whether working men or employers, who would reduce the standard of living to the European level? The object of the union shop is not to create a monopoly of opporunity. It is not a "closed shop." It is wide open to any workingman who is willing to help maintain the superior conditions that attract him. And what does this "monopoly" that has brought about these attractive conditions of employment take from him? Simply his right to commit suicide—industrial suicide.

Capital itself has declared against destructive competition. The competition that capital believes destructive may reduce profits, more or less. The competition sought for in the "open shop" would gradually destroy the unions and eventually lower the common plane of living.

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Trade unionists admit that the attitude of the so-called independent workman is legally right. But are not other workmen legally right in combining for mutual protection? They have had this right since 1824. Before that time, Lord Jeffrys tells us, an employer was at liberty to discharge a hundred men or a thousand on a mere whim, but if his men should quit jointly, however great the oppression, the law punished them with heartless severity. And before dismissing this phase of the subject I would remind you that in the union shop the employer's selection of men is practically unlimited—he may choose from the hundreds or thousands of men in the particular trade union. And, moreover, he has always the right to hire or discharge. Any attempt to interfere with this right of the employer is contrary to the policy of trade unionism.

The union shop is not a monopoly. It is a social necessity.

The "open shop" is impracticable. It will not help to solve the labor problem. And it renders practical arbitration almost impossible. The employer who has had the "open shop" and improved its opportunities to the full may laugh at the suggestion of arbitration. And should the men risk the hazard of the die and go on strike the non-union men may remain at work and, if necessary, non-union men may be sent in from other "open shops," and the strikers are cowed into submission.

Nor has the employer any reasonable guarantee that his men may not violate the agreement, if there be one; the average national or international trade union is powerless in such case to compel its local members to toe the mark. But how different in the union shop. Only a year or two ago we saw an international body, the longshoremen, punish a local union for violating an agreement by sending non-union men to take their places. This organization, needless to say, makes agreements only where the union shop obtains. The Typographical union guarantees its agreements with employers only in the case of the union shop. And who does not remember the splendid stand taken by the Mine workers during the anthracite strike, and in the very crisis of that struggle, at their Indianapolis convention, when they unanimously declared that the agreement with the bituminous operators should not be broken?

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Our own organization has no "open shop" and this explains our success with arbitration. We have had no serious strike in the last twelve years. In the city of New York we have co-operated with our employers in maintaining an arbitration board, and with such success that we have had but one dispute, and that a very slight one, in twenty years. In fact, the general arbitration plan that now obtains in the building industry of that city was practically copied after our local system. With the "open shop" arbitration would be a failure with us—we could not control our members.

In the "open shop" the efficiency must be of a lower order than that found in the union shop. This must be so so long as a proportion of the employes have reason to look upon the others as those who enjoy, more or less, the improved conditions of employment that they had not helped to bring about and who constitute a menace to the maintenance of these conditions. So long as this is true there can be little of the spirit of co-operation so necessary in our complex establishments of today, where workmen are so divided. And is it not to be supposed that the "open shop," which is neither one thing nor the other, after all, must become either a union shop or a non-union shop sooner or later? What if the non-union men in the "open shop" should organize? What chance would the employer have between the two?

Delinquent Notice.

COMSTOCK SILVER MINING COMPANY. Principal place of business, rooms 7 and 8, Walker's bank building, Salt Lake City, Utah.

Notice.—There are delinquent upon the following described stock on account of assessment No. 5, levied on the 30th day of September, 1903, the several amounts set opposite the names of the respective shareholders, as follows:

Cer.	Name.	Shares.	Amount.
471	M. Dusseldorf	1,000	$100 00
472	M. Dusseldorf	2,000	200 00
485	A. Hanauer, jr.	500	50 00
488	M. S. Hanauer	100	10 00
510	Geo. Y. Wallace	500	50 00
511	Geo. Y. Wallace	500	50 00
527	John McNally	1,000	100 00
528	John McNally	1,000	100 00
529	John McNally	1,000	100 00
530	John McNally	1,000	100 00
566	C. B. Markland	1,000	100 00
567	C. B. Markland	1,000	100 00
585	Samuel J. Paul	500	50 00
586	Samuel J. Paul	600	60 00
629	P. J. Anson	500	50 00
645	Max Hanauer	500	50 00
646	Max Hanauer	500	50 00
647	Max Hanauer	500	50 00
662	A. Hanauer, jr.	1,000	100 00
668	M. Dusseldorf	5,000	500 00
669	M. Dusseldorf	10,000	1000 00
695	A. Hanauer, jr.	3,000	300 00
696	R. J. Glendenning	200	20 00
718	A. W. Gallagher	100	10 00
782	E. Viko	100	10 00
815	H. W. Heagren	100	10 00
854	Ben Rash	100	10 00
873	Mike Brand	50	5 00
884	Simon Eiseman	1,000	100 00
890	Sadie Newman	100	10 00
891	Esther Eiseman	100	10 00
930	W. B. Eiseman	125	12 50
931	Rena Cohen	250	25 00
932	Simon Eiseman	250	25 00
967	C. C. Higgins	100	10 00
1037	M. J. Dowlin	200	20 00
1038	M. J. Dowlin	200	20 00
1055	Simon Eisman	100	10 00
1089	Michael Martin	100	10 00
1104	Bank of Commerce	500	50 00
1105	A. P. Zemansky	500	50 00
1124	J. Rice	1,000	100 00
1125	J. Rice	1,000	100 00
1171	H. G. Wood	200	20 00
1180	B. D. Newman	100	10 00
1201	A. L. Jacobs	100	10 00
1210	N. A. Page	100	10 00
1226	F. D. Higginbotham, jr.	100	10 00
1229	F. D. Higginbotham, jr.	100	10 00
1234	S. J. Paul	100	10 00
1240	Joseph Oberndorfer	100	10 00
1255	Meta Boettecher	100	10 00
1260	L. P. Marix	50	5 00
1279	A. M. Hanauer	1,000	100 00
1280	A. M. Hanauer	1,000	100 00
1281	A. M. Hanauer	1,000	100 00
1282	A. M. Hanauer	1,000	100 00
1283	A. M. Hanauer	1,000	100 00
1300	Joseph Oberndorfer	100	10 00
1301	Joseph Oberndorfer	50	5 00
1319	J. F. Ferris	100	10 00
1335	A. M. Hanauer	300	30 00
1336	A. M. Hanauer	300	30 00
1337	A. M. Hanauer	400	40 00
1340	Sheets & Thompson	100	10 00
1345	A. M. Hanauer	500	50 00
1346	A. M. Hanauer	500	50 00
1394	Barnett & Langley	100	10 00
1377	A. Hanauer, jr.	1,000	100 00
1378	A. Hanauer, jr.	1,000	100 00
1401	Joseph Oberndorfer	1,000	100 00
1408	S. A. Whitney	100	10 00
1421	Joseph Oberndorfer	100	10 00
1453	Ole Johnson	100	10 00
1456	Ole Johnson	100	10 00
1457	Ole Johnson	100	10 00
1506	J. A. McFadden	100	10 00
1517	H. B. Cole Co.	100	10 00
1554	Thomas G. Love	1,000	100 00
1569	William Rumel	500	50 00
1583	L. E. Camomile	400	40 00
1587	T. G. Love	50	5 00
1610	J. Oberndorfer	50	5 00

and, in accordance with the law and an order of the board of directors made on the 30th day of September, 1903, so many shares of each parcel of said stock as may be necessary will be sold at public auction at the office of the treasurer, rooms 7 and 8, Walker's bank building, corner of Main and Second South streets, Salt Lake City, Utah, on Saturday, the 21st day of November, 1903, at 2 o'clock p. m., to pay delinquent assessments, together with the cost of advertising and expense of sale.

JOS. OBERNDORFER, Treas.

By order of the board of directors of the Comstock Silver Mining company, the date fixed in the foregoing notice of delinquent sale for the sale of the delinquent stock is postponed to Saturday, the 5th day of December, 1903, at the same hour and place.

JOSEPH OBERNDORFER, Treasurer Comstock Silver Mining Co.
Dated this 20th day of November, 1903.

Notice of Assessment.

SPIDER MINING COMPANY.—Principal place of business, Salt Lake City, Utah. Notice is hereby given that at a meeting of the board of directors held on the 3rd day of November, 1903, an assessment of one-fourth (¼) cent per share was levied on the capital stock of the corporation, payable on or before Dec. 21, 1903, to W. A. Langford, treasurer, 884 West Second South, Salt Lake City, Utah. Any stock upon which this assessment may remain unpaid on the 21st day of December, 1903, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on Friday, Jan. 15, 1904, at 8 p. m., to pay the delinquent assessment, together with the cost of advertising and the expense of sale.

W. A. LANGFORD, Secretary and Treasurer.